

ROSS WILKINS, JAMES WITHERELL, AND SOLOMON
SIBLEY.

[To accompany bill H. R. 645.]

DECEMBER 26, 1856.

Mr. SIMMONS, from the Committee on the Judiciary, made the following

REPORT.

*The Committee on the Judiciary, to whom were referred the memorial of
Ross Wilkins and the petition of B. F. H. Witherell, report:*

These are applications from one of the judges of the Territory of Michigan, and from the son and legal representative of another, to be allowed the benefits of the act of the last session of Congress entitled "An act to provide compensation for the services of George Morell, in adjusting titles to land in Michigan." This act allows compensation to Judges Chipman and Woodbridge as well as to Judge Morell, and the same reasons which justified the payment to them, as members of the "land board" in virtue of their judicial tenures, would seem to require that like compensation should be allowed to the other judges. The accompanying bill merely extends the operation of the act of last session so as to embrace the other judges. A full statement of the case will be found in report No. 91, first session thirty-third Congress.

IN THE SENATE OF THE UNITED STATES, February 7, 1854.

Mr. WILLIAMS made the following report:

[Rep. Com. No. 91, to accompany Bill S. 193.]

The Committee of Claims, to whom was referred the memorial of Maria Morell, widow of the late honorable George Morell, one of the judges of the supreme court of the Territory of Michigan, praying compensation for the services of her late husband as a member of the board for the adjustment of land titles in Detroit, have had the same under consideration and report:

It appears that the honorable George Morell was appointed, in the year 1832, one of the judges of the supreme court of the Territory of Michigan, and continued to fill that office until the admission of that

State into the Union, in 1836. During that period, up to September 24, 1836, as appears from the statement of A. S. Kellogg, the last secretary of the "land board," Judge Morell devoted much of his time to the duties of said "board," and was a very active and efficient member thereof. The statement of said Kellogg is hereto annexed.

At the last session of Congress the Senate passed a bill to compensate Judges Woodbridge and Chipman, who were members of the same board, for their services thereon, at the rate of \$500 per annum. The committee are of opinion that that sum is not more than a just remuneration for the services required and rendered; they therefore report a bill allowing Judge Morell the same rate of compensation, and recommend its passage.

The principles and reasons governing the case are fully stated in the report of the Committee on the Judiciary, made in the parallel case of Judges Woodbridge and Chipman, (before alluded to,) and which is hereto annexed and made a part of this report.

IN THE SENATE OF THE UNITED STATES, *February 15, 1848.*

The Committee on the Judiciary, to whom was referred, on the 5th of January, the memorial of William Woodbridge and Henry Chipman, report:

That by the act of Congress of the 21st April, 1806, "to provide for the adjustment of titles of land in the town of Detroit and Territory of Michigan, and for other purposes," the duty and responsibility of its execution devolved upon the governor and the judges of the Territory of Michigan, to whom a further specific duty was assigned by the act of the 28th May, 1830.

By the acts of Congress for the government and regulation of the Territory of Michigan, these officers were charged with the highly important and varied duties appertaining to their respective positions, the responsibilities and the mental and physical labors of which demanded their unremitted attention, and for which the acts of Congress creating those offices designed to do no more than to make a just and adequate compensation, and which, it has been found, has been less than that attached to similar offices in other Territories of the United States.

The acts of Congress of 1806 and 1830, prescribing these extra official duties and responsibilities, were confined to the single purpose of imposing those extraordinary services, without embracing, as other acts in similar cases have done, the correlative provision to render a proper compensation for them.

It is true that the government has the power to direct the performance of varied and irrelevant services by a public officer, whose official duties have been defined and fixed by the statute and the common law or usage, while the public officer is bound to obey the law, however onerous or even oppressive the duties and responsibilities which may have been thus superadded to his regular official duties; but in most,

if not all of these cases, the government has in view important advantages to its interests, in securing the due execution of its laws and in administering impartial justice towards and between its citizens, by availing itself of the experience and the tried integrity and intelligence of its officers.

In many cases the additional duties and responsibilities enjoined upon its officers are irrelevant, if not foreign to those of the officer upon whom they have been so enjoined; but in a large portion of these cases, such additional duties, being comparatively trivial in their character, or of a nature foreign to the power of any particular office, and of short duration, would not seem to require, nor would officers performing them expect, any pecuniary compensation. The duties and responsibilities for which compensation is now claimed, were of a different character from these, as may be seen by the laws directing their performance, which plainly show their high importance and necessary duration, the extent of which is manifest from the fact, that although commenced in 1806, it was deemed necessary, by the passage of the act of August 29, 1842, to continue and transfer the powers, duties, and responsibilities from the officers to whom they were assigned by the act of 1806, (rendered necessary by the change of the territorial to the State government,) to the mayor, recorder, and aldermen of the city of Detroit, by whom they have been performed for the benefit of the parties interested, since that time.

That it was not the intention of the government, by the omission to provide in the act of 1806 a proper compensation to these officers, to deny the principle or propriety of making such additional compensation, is evident from the fact that several acts approved the same day as that act provided additional compensation to officers in analogous cases, where additional duties similar to those required of the memorialists were prescribed. The amount of compensation in these cases (although more than is claimed by the memorialists) bears but a small proportion, relatively, to the salaries or emoluments that it would have been necessary to provide for commissioners, who might have been appointed exclusively to perform these same duties, which were super-added to the regular duties of these officers; and it may, therefore, be reasonably inferred that, in addition to the higher considerations connected with the assignment of these extra official duties to these officers, it was a measure of economy on the part of the government, since experience, fidelity, responsibility, and an intelligent execution of the law were secured, at perhaps one fourth of the amount that would otherwise be required, to secure the exclusive services of suitable persons, with the risk, at least, of a want of some of those qualifications.

When it is considered that questions arising under these acts for adjusting the titles and settling private claims to land involve intricate questions and principles of law and vast amounts of property, the policy of entrusting these important functions to intelligent and experienced officers, having already the confidence of the government, may be understood, and accounted for in the continual practice of the government upon the subject.

With regard to the allowance of additional compensation coeval with

the imposition of extra official duties, the practice appears to have been almost general, and the omission to provide such compensation when such duties have been enjoined, as in the case now under consideration, seems a departure from such general practice, as an evidence of which, the committee, without intending to include all of the precedents upon the subject, subjoin a list of some of them, with references to the statutes in which they are to be found; and, deeming the claim of the memorialists reasonable and just, the committee report a bill for its payment.

LIST OR STATEMENT OF PRECEDENTS IN WHICH ADDITIONAL COMPENSATION HAS BEEN PROVIDED FOR JUDICIAL OR MINISTERIAL OFFICERS OF THE GOVERNMENT, WHO HAVE BEEN REQUIRED BY LAW, TO PERFORM EXTRA OFFICIAL DUTIES IN ASCERTAINING AND ADJUSTING TITLES AND CLAIMS TO LAND, &c., VIZ:

[Little and Brown's edition of the Laws of the United States will be referred to for the statutes mentioned in the following list.]

Approved.

March 3, 1803.

Section thirteen of "An act regulating the grants of land, and providing for the disposal of the lands in the United States, south of the State of Tennessee." The commissioners allowed \$2,000, and the registers of land offices, acting as commissioners, \$500 for services as commissioner. Vide volume 2, page 234.

March 26, 1804.

Section four of "An act making provision for the disposal of the public lands in the Indiana Territory, and for other purposes." The registers and receivers of three land offices allowed \$500 each for services as commissioners.—Volume 2, page 279.

March 3, 1805.

Section five of "An act supplementary to the act entitled 'An act making provision for the disposal of the public lands in the Indiana Territory, and for other purposes.'" Each of said registers and receivers allowed a further sum of \$500.—Volume 2, page 345.

April 21, 1806.

Section six of "An act supplementary to an act entitled 'An act for ascertaining and adjusting the titles and claims to land within the Territory of Orleans and the district of Louisiana.'" Each of the registers of the land offices in the Territory of Orleans allowed, in addition to his other emoluments, \$500, for about eight months' services as commissioner under this act.—Volume 2, page 392.

April 21, 1806.

Section three of "An act respecting the claims to land in the Indiana Territory and State of Ohio." Each of the registers and receivers to

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whom extra official duties were assigned by this act, were allowed an additional compensation of \$500.—Volume 2, page 395.

March 3, 1807.

Section six of "An act confirming claims to land in the district of Vincennes, and for other purposes." The register and receiver to be allowed each an additional compensation of \$500, for his services, in relation to such claims.—Volume 2, page 447.

June 13, 1812.

Section eight of "An act making further provision for settling the claims to lands in the Territory of Missouri." The recorder allowed fifty cents for each claim decided on, in addition to his salary, and \$500 additional compensation on the completion of the business.—Volume 2, page 752.

March 3, 1813.

Section six of "An act allowing further time for delivering the evidence in support of claims to land in the Territory of Missouri, and for regulating the donation grants therein." The recorder of land titles allowed additional compensation similar to the above.—Volume 2, page 815.

March 3, 1819.

Section ten of "An act for adjusting the claims to land, and establishing land offices in the district east of the island of New Orleans." The registers and receivers, respectively, allowed as a compensation for *their services in relation to the said claims*, at the rate of \$1,500 a year.—Volume 3, page 531.

March 3, 1823.

Section three of "An act providing for the examination of the titles to land in that part of the State of Louisiana situated between the Rio Hondo and the Sabine river." The register and receiver allowed each a compensation of \$500 for the services required by this act, &c.—Volume 3, page 757.

May 26, 1824.

Section thirteen of "An act enabling the claimants to lands within the limits of the State of Missouri and Territory of Arkansas to institute proceedings to try the validity of their claims." "The district judge for the State of Missouri, shall, while in the discharge of the duties imposed by this act, be allowed at the rate of \$800 per annum, in addition to his salary as district judge for the State of Missouri."—Volume 4, page 56.

March 3, 1825.

Section eight of "An act to extend the time for the settlement of private land claims in the Territory of Florida, to provide for the preservation of the public archives in said Territory, and for the relief of John Johnson." The commissioners, under this act, were allowed \$2,000 per annum, and the register and receiver were each

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allowed the sum of \$1,000 for the performance of the duties required by this act.—Volume 4, page 126.

February 8, 1827.

Section six of "An act to provide for the confirmation and settlement of private land claims in East Florida, and for other purposes." By this act the register and receiver were entitled to receive the sum of \$1,500 per annum, as a full compensation for the performance of his duties, and *the additional duties*, required by this act, &c.—Volume 4, page 203.

March 3, 1827.

Section two of "An act supplementary to the several acts providing for the adjustment of land claims in the State of Alabama." By this act the register and receiver were allowed, as a compensation for their services in relation to said claims, and for the services to be performed under the provisions of the several acts to which this is a supplement, at the rate of \$1,000 per annum. Volume 4, page 240.

May 23, 1828.

Section four of "An act supplementary to the several acts providing for the settlement and confirmation of private land claims in Florida." By this act the register and receiver were each allowed \$1,000, as extra compensation, for acting *ex officio* as commissioners, &c. Certain claims under this act to be received and adjudicated by the judge of the superior court of the district within which the land lies, &c.—Volume 4, page 285.

March 2, 1829.

"An act making additional appropriations for the support of government for the year 1829." This act provides for additional compensation to the district judge for the district of Missouri, under the act of 26th May, 1824.—Vol. 4, page 342.

May 8, 1830.

Section eight of "An act for further extending the powers of the judges of the superior court of the Territory of Arkansas, under the act of the 26th day of May, 1824, and for other purposes." This act imposed certain duties relating to land claims upon those judges, and enacts, "that each of the judges of the supreme court of the Territory of Arkansas shall, while in the discharge of their duties, imposed by this act, be allowed at the rate of \$800 per annum, in addition to their salary as judges of the superior court for the Territory of Arkansas," &c.—Volume 4, page 401.

March 2, 1831.

"An act making appropriations for the support of government for the year 1831." This act provides "for compensation to William Cranch,

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chief justice of the circuit court for the District of Columbia, for preparing a code of civil and criminal jurisprudence, in compliance with an act of Congress, approved 29th April, 1816, \$1,000." Volume 4, page 457.

July 4, 1832.

Section five of "An act for the final adjustment of the claims to lands in the southeastern land district of the State of Louisiana." By this act the register and receiver of the land office were allowed the sum of \$500 each, as additional compensation for additional services therein prescribed.—Volume 4, page 562.

July 9, 1832.

Section four of "An act for the final adjustment of private land claims in Missouri." By this act the recorder of land titles was allowed for his additional services, imposed thereby, the sum of \$1,500 per annum.—Volume 4, page 567.

March 3, 1839.

Section thirteen of "An act in addition to 'An act to promote the progress of the useful arts,' " makes provision that there be paid annually, out of the patent fund, to the chief justice of the district court of the United States for the District of Columbia, in consideration of the extra services imposed by this act, the sum of \$100.—Volume 5, page 355.

March 3, 1845.

Section seven of "An act making appropriations for the civil and diplomatic expenses of the government for the year ending 30th June, 1846, and for other purposes," makes provision for additional compensation to the district judges of Missouri, Arkansas, Louisiana, Mississippi, and Alabama, under the provisions of the first section of the act of 17th June, 1844, the sum of \$7,666 67.—Volume 5, page 765.

